



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/634,381	08/09/2000	Roy L. Hood	40333.0113	5176

7590 06/19/2002  
enneth D Goetz  
Lathrop & Gage  
2345 Grand Boulevard  
Suite 2800  
Kansas City, MO 64018

EXAMINER

PIERCE, JEREMY R

ART UNIT	PAPER NUMBER
----------	--------------

1771

DATE MAILED: 06/19/2002

Cf

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/634,381

Applicant(s)

HOOD ET AL.

Examiner

Jeremy R. Pierce

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 16-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 August 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1,2. 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-15, drawn to a molded polymeric article, classified in class 428, subclass 92.
  - II. Claims 16-25, drawn to polymer molding apparatus, classified in class 425, subclass various.
  - III. Claims 26-33, drawn to a method for forming a multi-polymer article, classified in class 264, subclass various.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case the product can be made with a traditional apparatus. In which case, the two separate polymers can be joined in the molds by injecting them one on top of the other rather than in two separate ports.
3. Inventions I and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process

(MPEP § 806.05(f)). In the instant case the two separate polymers can be joined in the molds by injecting them one on top of the other rather than in two separate ports.

4. Inventions II and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus can be used in a process involving only one polymer rather than two different polymers.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. During a telephone conversation with Kenneth Goetz on June 6, 2002 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-15. Affirmation of this election must be made by applicant in replying to this Office action. Claims 16-33 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Drawings***

7. Figures 3 and 4 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 cites a "planar two-dimensional base section". This is indefinite because it is unknown how to make a molded polymeric article two-dimensional. Additionally, Claim 1 recites the limitation "terminal parts" in the projecting elements. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily

published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

11. Claims 1, 2, 5-8, 10, 12, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Doleman et al. (U.S. Patent No. 3,507,010).

Doleman et al. disclose a polymeric article with a base member and projecting elements extending from one side of the base member (column 6, lines 69-75 and Figures 8 and 9). With regard to the limitation of being the article being formed from a first and second polymer, Applicant offers no suggestion in the claims that the two polymers have to be different in any manner. Support for this is seen in claim 8, where it is stated that "at least one of said polymers is polyethylene", thus leading one to presume that both polymers can be polyethylene. With regard to claims 2, 7, and 12, Doleman et al. teach the article has pigment incorporated therein (column 9, line 46). With regard to claims 5 and 8, Doleman et al. teach making the article out of polyethylene (column 3, lines 61-66). With regard to claim 10, open sections in the base material can be seen in Figures 8 and 9.

12. Claims 1, 2, 5-8, 12, 13, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Rawlinson (U.S. Patent No. 4,329,196).

Rawlinson teaches a laminate comprising a grass-like layer of low-density polyethylene and a rigid substrate layer of high-density polyethylene (columns 1-2, lines 66-27). With regard to claims 2, 7, and 12, Rawlinson discloses the different layers can contain pigments (column 3, line 14). With regard to claim 13, Rawlinson teaches the low-density polyethylene to have a density of between 0.90 and 0.93.

13. Claims 1, 2, 5-10, 12, 14, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Schepp et al. (U.S. Patent No. 4,004,376).

Schepp et al. teach a scouring pad comprising a base member from which a plurality of projections extend vertically (column 1, lines 26-43). With regard to claims 2, 7, and 12, Schepp et al. disclose the article can be pigmented (column 2, line 51). With regard to claims 5 and 8, Schepp et al. teach the article can be made from low-density polyethylene (column 2, lines 1-5). With regard to claim 9, Schepp et al. disclose an abrasive non-woven nylon backing is applied to the three-dimensional brushing layer (column 2, lines 6-17). With regard to claim 10, Figure 2 shows the polyethylene layer includes open spaces. With regard to claim 14, Schepp et al. incorporate aluminum oxide into the article (column 2, line 15).

14. Claims 1, 2, 5-10, 12, 13, and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Holtrop et al. (U.S. Patent No. 6,357,388).

Holtrop et al. disclose a cat litter mat having flexible projections formed from thermoplastic polyolefin elastomer (column 1, lines 38-44). With regard to claims 2, 7, and 12, Holtrop et al. disclose using coloring pigments in the elastomer (column 2, line 55). With regard to claims 5, 8, and 13, Holtrop et al. disclose the elastomer comprises polyethylene having a density of between 0.910 and 0.925 gm/cc (column 2, line 34). With regard to claim 9, Holtrop et al. disclose an optional backing layer of fabric or plastic film (column 2, lines 1-5). With regard to claim 10, holes are present in the base layer of Figure 3.

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 3, 4, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doleman et al., Rawlinson, Schepp et al. or Holtrop et al.

With regard to claims 3, 4, and 11, the references do not disclose the specific manner in which the article is to be dyed. It would have been obvious to one skilled in the art to select a dying pattern where parts of the substrate are dyed with one color and other parts are dyed with a different color in order to make a substrate with better aesthetics.

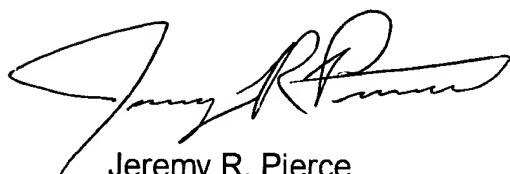
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (703) 605-4243. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

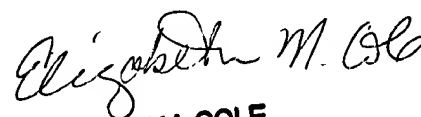


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Jeremy R. Pierce  
Examiner  
Art Unit 1771

June 17, 2002



ELIZABETH M. COLE  
PRIMARY EXAMINER